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11
12 SUPERIOR COURT OF STATE OF ARIZONA
13 COUNTY OF YAVAPAI

14 **STATE OF ARIZONA,**

15 Plaintiff,

16 vs.

16 **JAMES ARTHUR RAY,**

17 Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
MOTION TO STRIKE STATE'S LATE
RESPONSES TO DEFENDANT'S
MOTIONS IN LIMINE NOS. 8 AND 9;
OR, IN THE ALTERNATIVE, REQUEST
FOR EXTENSION OF TIME**

22 On this day, the State has filed two pleadings: State's Response to Defendant's Motion in
23 Limine No. 8 to Exclude The Testimony of Steven Pace ("State's Pace Response"); and State's
24 Response to Defendant's Motion in Limine No.9 to Exclude the Testimony of Rick Ross ("State's
25 Ross Response"). Both Responses were due on February 3, 2011.¹ As a result, the State's
26 Response's could be stricken. See Ariz. R. Crim. P. 35.1(a) ("If no response is filed, the motion

27 ¹ On January 21, 2011, this Court denied the parties' requests for an extension of time for filing of motions
28 related to experts. Mr. Ray timely filed Motions in Limine Nos. 8 and 9 on January 24, 2011.

10 **FILED**
O'Clock 4 M
FEB 09 2011
JEANNE HICKS, Clerk
BY [Signature] Deputy

1 *shall* be deemed submitted on the record before the court.” (emphasis added)). Striking the
2 Responses would be appropriate here, because the State’s delay is prejudicial to the Defense.
3 Trial is set to begin in just eight days. This Court has already noted the time constraints in this
4 case, and the need to timely file motions regarding to expert witnesses, in its Order Denying
5 Requests For Additional Extensions of Time for Filing Motions Regarding Expert Witnesses,
6 issued January 21. *See* Order at 1 (noting that “trial is set to begin in less than four weeks”). Of
7 particular concern, the State’s Responses appear to include new evidence or arguments that the
8 prosecution is now presenting for the first time. *See, e.g.,* State’s Ross Response at 4
9 (“Participants were fed a vegetarian diet so they would ‘not be grounded.’”).

10 In the alternative, because the Defense’s replies would otherwise be due today, the
11 Defense requests an extension of time to this Friday, February 11, to reply to the State’s
12 Responses. Two proposed orders are attached.

1 DATED: February 9th, 2011

MUNGER, TOLLES & OLSON LLP

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By: 

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8 Copy of the foregoing delivered this 9th day
9 of February, 2011, to:

10 Sheila Polk
11 Yavapai County Attorney
12 Prescott, Arizona, 86301

13 by 

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CASE NO. V1300CR201080049

DIVISION PTB

Honorable Warren R. Darrow

ORDER

19
20 Based on the Defendant's Motion to Strike the State's Late Responses to Defendant's
21 Motions in Limine Nos. 8 and 9, and good cause appearing therefor:

22 IT IS ORDERED that the State's Responses are stricken.

23 SIGNED this ____ day of February, 2011.

24
25 Warren R. Darrow

26 Judge of the Superior Court